

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS G. MAZZA,

Plaintiff,

-against-

AMERICA ONLINE, INC.;
TRILEGIANT CORP.,

Defendants.
-----x

TOWNES, United States District Judge:

Plaintiff Thomas G. Mazza, appearing *pro se*, filed a sparse one-page handwritten complaint alleging fraud and the unauthorized electronic withdrawal of money from his checking account. By order dated August 10, 2005, the Court directed plaintiff to file an amended complaint to detail his fraud claims against defendants, see Fed. R. Civ. P. 9(b), and to set forth the basis for the Court's subject matter jurisdiction.

In response, plaintiff filed an amended complaint which states the following:

I am enclosing 4 documents to substantiate my claim and to inform you that it took approximately 6 months to achieve getting commitments from the OAL, Trilegiant, and the Attorney General's Office. I did not authorize AOL or Trilegiant to electronically withdraw monies from my account.

I don't think that my 1 Billion dollars claim is frivolous because the AOL has committed the fraud. The letters send to the Attorney General indicates to me that they admitted to the fraud. Perhaps this law suite will create new laws protecting citizens from companys that are incompetent and ruthless.

Plaintiff attached letters from the Attorney General's Office, America Online (AOL) and Trilegiant and a copy of a bank statement.

IN CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
7-10-05
TIME A.M.
**MEMORANDUM
AND ORDER**

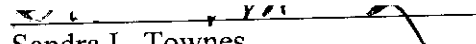
05-CV-3545 (SLT)

Plaintiff's fraud claims are dismissed against defendants since he has failed to comply with the pleading requirements set forth under Fed. R.Civ. P. 9(b) and described in the Court's prior order. Furthermore, plaintiff does not allege facts sufficient to conclude that the alleged withdrawals from his checking account to remit payment to AOL and Trilegiant arise under the Court's subject matter jurisdiction as described in the Court's prior order. According to the letters attached to plaintiff's amended complaint, AOL issued a refund of \$86.70 and canceled his account and Trilegiant issued a credit of \$9.00 and canceled his account. Thus, plaintiff has not provided facts to show that a recovery in excess of \$75,000 is appropriate here.

CONCLUSION

Accordingly, the action, filed *in forma pauperis*, is dismissed for lack of subject matter jurisdiction and for failure to plead fraud with particularity. Fed. R.Civ. P. 9 (b) and 12 (h)(3). The Court certifies pursuant to 28 U.S.C. § 1915 (a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.


Sandra L. Townes
United States District Judge

Dated: Brooklyn, New York
September 27, 2005